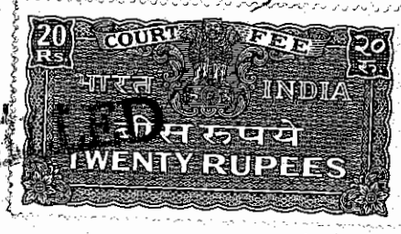

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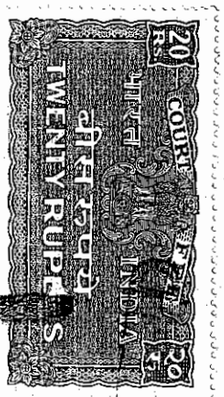
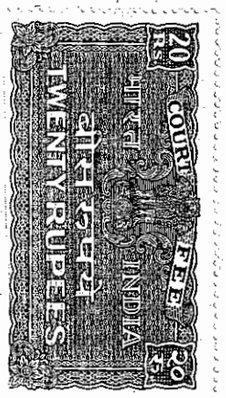
IN THE HIGH COURT OF JUDICATURE AT BILASPUR.
CHHATTISGARH

WRIT PETITION NO. 110 OF 2000





PETITIONERS

Gauri Manikpuri, Aged about 39 years, W/o Ashok Kumar Manikpuri
R/o Rajiv Nagar,
Near Balram Talkies
Police Station Civil Lines
Bilaspur

VERSUS

RESPONDENTS

1. The State of Chhattisgarh
Through Collector
Bilaspur

2. Superintendent of Police
Bilaspur

3. The Station House Officer
Police Station Civil Lines
Bilaspur

4. Montu @ Santosh Pahadi
Aged about 20 years
S/o Preetam Pahadi
R/o Kududand,
Bilaspur

5. The Station House Officer
Mahila Thana
Bilaspur

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH, BILASPUR

(DIVISION BENCH: HON'BLE Mr. CHIEF JUSTICE W.A.SHISHAK &
HON'BLE Mr. JUSTICE R.S.GARG.)

WRIT PETITION NO.110/2000

Gauri Manikpuri

Vs

State of Chhattisgarh and others.

- - -

O R D E R

(Passed on 8/1/2001)

The following order was passed by R.S.Garg, J.

By this petition under Article 226 of the Constitution of India, the petitioner seeks the relief of Habeas Corpus in relation to her daughter Manisha, mainly on the ground that the girl was born on 5/10/1983 and as the girl was kidnapped by non-applicant/respondent no.4 - Montu alias Santosh pahadi and as the police was not taking proper action in the matter, the Court must interfere and direct respondents nos. 1 to 3 and 5 to make search into whereabouts of the girl, restoring the girl and give the custody to the present petitioner. We on the allegations made in the petition, on 15/12/2000 issued rule nisi against respondents nos. 1 to 3 and 5 that they should make a thoroughsearch into whereabouts of the girl and produce her before the Court. On the request of Dr.Shukla, the learned Deputy Advocate General, the matter was taken up in supplementary list.

2. For perusal of this Court, Dr. Shukla has produced certain documents contending that the date of birth of the girl is 2/1/1982 and not 5/10/1983 as asserted by the present petitioner. H e also submits that on 30/8/2000 on an application made by the present petitioner under section 97 of the Cr.P.C., Criminal Case No.169/2000 was registered by the City

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Magistrate, Bilaspur. The said City Magistrate in his turn issued notice to Santosh Pahadi and his father and required the present applicant/petitioner and said Santosh Pahadi and his father Preetam Pahadi to appear before him. According to him, the matter was taken up on 4.9.2000 but the present petitioner for the reasons best known to her did not appear before the City Magistrate, therefore, the said Sub-Divisional Magistrate after production of the girl had to proceed in the matter. According to him, the statements of the girl were recorded on 4.9.2000 by the said Magistrate. The girl in her statements on oath submitted before the said S.D.M. that her date of birth is 2nd Jan. 1982 and as such on the date when she left the custody of the mother she was major. She also stated before the S.D.M. that after attaining the age of discretion and majority, she had married said Santosh Pahadi on 10.8.2000 and since thereafter she was living with her husband Santosh Pahadi. Said Manisha submitted copies of her mark-sheets to satisfy the Magistrate that she was born on 2.1.1982. From the records submitted by Dr. Shukla, it appears that after recording the statements of said Manisha, the said City Magistrate came to the conclusion that the girl was major. She left the custody of the mother of her own and after marrying the non-applicant no.4 Santosh Pahadi, she was living with her husband.

3. The fact that on an earlier occasion the girl left the custody of her parents is mentioned in paragraph 3 and paragraph 5.2 of the petition. The petitioner has also submitted that on 24.10.2000 when the

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petitioner had gone to attend her work, the relatives of Santosh Pahadi came to her house and kidnapped the girl. In her petition she did not say that she was required to appear before the City Magistrate on 4/9/2000 nor did she disclose her absence on 4/9/2000 when final order was passed by the said S.D.M.

4. It would not be necessary to presume at this stage that after gaining knowledge of culmination of the proceedings before the City Magistrate, the petitioner filed this petition, but we would be justified in observing, taking into consideration the total records, that the girl did appear before the City Magistrate on 4/9/2000, her statements were recorded by the said City Magistrate, she had filed her mark-sheets to show that she was major on that date and after recording the satisfaction, the said City Magistrate set the girl at liberty.

5. As the girl was already produced before the City Magistrate, Bilaspur, who after making enquiry into the age of the girl, came to the conclusion that on the date of the incident, so also on the date of her production, she was major, it is not necessary for us to enter into further dispute as to what is the real date of birth of the girl.

6. At this stage, Shri Ayaz Naved, the learned counsel for the petitioner submits that enquiry made on 4/9/2000 was ex-parte, therefore, the said order deserves to be quashed by this Court and the petition deserves to be allowed permitting the petitioner to lead evidence to show to the Court/City Magistrate that the date of birth of the girl was 5/10/1983 and not 2/1/1982.

7. In our considered opinion, in a petition of Habeas Corpus, it is necessary to make an enquiry into the age of a kidnapped person if there is no available evidence on the record. We would have been justified in giving a further direction to the learned City Magistrate for holding a further enquiry provided the two mark-sheets showing the date of birth had not been with us. As the two mark-sheets show that the girl on the date of the incident and her production before the City Magistrate was major and she was already produced before the competent officer, we would not be justified in granting an opportunity to the petitioner after quashing the R-1 order passed by the City Magistrate in these proceedings. If the petitioner feels aggrieved by the order dated 4.9.2000, she would be free to challenge the correctness, validity and propriety of the said order before a competent Court.

8) As the girl, even before us, has stated that she is major and wants to go with her husband Santosh Pahadi, we are unable to issue any further direction in this matter. If the petitioner files any appeal/revision against the order of the City Magistrate or takes up the matter with the higher authority in appeal or revision, said appeal or revision shall be decided by the said authority in accordance with law, without being influenced by any observations made in this order as the observations made in this petition are in relation to disposal of this petition only.

9. We find no reason to grant this petition. It is accordingly dismissed. The rule nisi is discharged.

Sd/-
Chief Justice

Sd/-
R.S. Garg
Judge

8/1/2001

JLL